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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,995	03/19/2004	David M. Dolezal	28,982-01 (186675/US)	8934

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EXAMINER

LEWIS, AARON J

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/804,995

Applicant(s)

DOLEZAL ET AL.

Examiner

AARON J. LEWIS

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-12, 15, 16, 20-27, 30 and 31 is/are rejected.
- 7) ☒ Claim(s) 4-7, 13, 14, 17-19, 28, 29 and 32-35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,9,12,21,22,24,25, are rejected under 35 U.S.C. 102(b) as being anticipated by King ('150).

As to claim 1, King (figs.1-2) discloses a breathing air filtration device, including: a concave-convex (fig.1) first filtering medium (35) having a first rim (32) at a proximal end thereof and defining a first opening surrounded by the first rim; a concave-convex (fig.1) second filtering medium (35) having a second rim (32) at a proximal end thereof and defining a second opening surrounded by the second rim; and a support structure including a first base member (31) coupled integrally with respect to the first rim to support the first filtering medium, a second base member (31) coupled integrally to the second rim to support the second filtering medium, and a connecting member (24) coupled integrally to the first base member and the second base member and extended between the first and second base members; wherein the base members of the support structure are positionable at the nasal cavity entrances, with the connecting member spanning the septum, to place each of the first and second filtering media in a working position in which the filtering medium projects distally into an associated one of the nasal cavities, whereby air entering each nasal cavity passes through the associated

one of the first and second openings, and further passes through the associated one of the first and second filtering media.

As to claim 2, King (fig.1) discloses each of filtering media, when in its working position, is spaced apart from the septum and the nasal wall (by virtue of the cup shape of the filter medium includes at least portions of the filter media do not touch either of the nasal wall or nasal septum) defining the associated nasal cavity.

As to claims 9,25, King (fig.2) discloses a filter medium having a truncated conical shape.

As to claim 12, King (fig.3) illustrates each of the base members (31) is generally annular and sized for correspondence with the rim (32) of its associated filtering medium.

Claim 21 is substantially equivalent in scope to claim 1 and is anticipated by King for the reasons set forth above with respect to claim 1.

As to claim 22, the filters (35) of King are illustrated as being concave in the proximal direction and convex in the distal direction.

As to claim 24, King (col.2, lines 10-16) discloses the connecting member (24) as having a ball and socket joint (33,38) that enables it to maintain the first and second base members in a selected angular orientation relative to one another.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3,8,9,15,20,23,27,30,31 are rejected under 35 U.S.C. 103(a) as being unpatentable over King ('150) in view of Pandorf ('155).

The difference between King and claim 3 is a filter media that is structurally self-supporting.

Pandorf, in a nasal filter device, teaches a filter media (#22 of fig.6) that is illustrated as being structurally self-supporting prior to be inserted into oval frame (10-12).

While King is silent as to the constituency of the filter media, it would have been obvious to employ any well known filter medium including one that is structurally self-supporting as taught by Pandorf.

Claim 26 is substantially equivalent in scope to claim 3 and is included in King as modified by Pandorf.

As to claims 8,23, Pandorf teaches a filter medium having an ellipsoidal shape (fig.6).

As to claims 9,27, while neither King nor Pandorf expressly disclose a filter medium to have corrugations, it is submitted that it would have been obvious to modify the shape of the filter medium of King to be of any desired shape including one having corrugations as an obvious matter of design choice and because corrugations is a well known expedient for increasing structural rigidity and strength of an element as well as increasing filtering surface area. Applicant has provided no criticality to a corrugated shape; consequently, it is submitted that the shape of the filter medium of King would have performed equally well to one having corrugations.

As to claim 15, the size of the filter medium of King relative to its first opening (within rim 32) can be arrived at through mere routine obvious experimentation and observation with no criticality seen in any particular size ratio including 1.5:1 as claimed. One of ordinary skill would recognize the need for increasing the relative size for adult patients or adult athletes whereas the ratio for children would be smaller. Applicant has provided no criticality for the particular ratio; consequently, it is submitted that the relative sizes of the filter medium of King would have performed equally well to one having a size ration of 1.5:1.

As to claims 20,30,31, the base members of King as modified by Pandorf, being elliptical in shape when positioned at the entrances to the nasal cavities, tend to compliantly conform to the nasal surface.

5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over King ('150) in view of Albu ('149).

The difference between King and claim 16 is first and second screening components associated with the first and second filtering media, respectively, wherein each screening component is mounted with respect to its associated base member and disposed proximally of the associated filtering medium.

Albu, in a nasal filter device, teaches first and second screening components (14) associated with the first and second filtering media (13), respectively, wherein each screening component is mounted with respect to its associated base member and disposed proximally of the associated filtering medium for the purpose of protecting the filter medium against damage.

It would have been obvious to modify the filter medium of King to include a screening component therearound because it would have provided protection against damage as taught by Albu.

Allowable Subject Matter

6. Claims 4-7,13,14,17-19,28,29,32-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant nasal filter devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


AARON J. LEWIS
Primary Examiner
Art Unit 3743

Aaron J. Lewis
December 12, 2005